

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS: 07-0435  
Gross Retail Tax  
For the Years 2004, 2005, and 2006**

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**ISSUE**

**I. Taxpayer Records – Gross Retail Tax.**

**Authority:** IC 6-8.1-5-4(a); IC § 6-8.1-5-1(b).

Taxpayer argues that the Department of Revenue overstated the amount of gross retail tax owed by taxpayer.

**STATEMENT OF FACTS**

Taxpayer owns and operates a garden center which sells plants, trees, shrubs, and accessories for gardening and landscaping. The Department of Revenue (Department) conducted an audit review of business records and tax returns for 2004, 2005, and 2006. The audit resulted in the assessment of additional gross retail (sales) tax. Taxpayer disagreed with the amount assessed and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer's representative explained the basis for the protest. This Letter of Findings results.

**I. Taxpayer Records – Gross Retail Tax.**

**DISCUSSION**

The Department's audit found that taxpayer's records were inadequate. The audit report indicated that taxpayer provided only handwritten summaries with no corresponding source documents. The audit found that taxpayer did not have register tapes and that certain invoices for exempt sales were incomplete. During the audit, taxpayer was asked to provide additional records which were accepted in part but were also found deficient or inadequate in part. Faced with these obstacles, the audit relied on bank deposit records that were used to determine total receipts for each year. Taxpayer was given credit for exempt sales, for money moved between different bank accounts, for sales made to out-of-state locations, for bad checks, and for money deposited into the account but attributable to the sale of real property.

Taxpayer argues that the audit report overstates the amount of sales attributable to taxpayer's garden center. Taxpayer explains that he "lent" one of his credit card terminals to another, unrelated business and regularly allowed the unrelated business to make credit card payments

into his own bank account. Taxpayer retained a portion of these credit card payments and remitted the difference to the unrelated business. Taxpayer believes that he should not bear the responsibility for paying the sales tax on these sales.

In addition, a third party operated a similar but operationally unrelated business out of taxpayer's garden center. The proceeds from the third-party's business were also deposited into taxpayer's own bank account. Taxpayer argues that he should not be responsible for paying sales tax on these receipts or – alternatively – that the third-party's proceeds are attributable to the sale of services and are not subject to sales tax.

Taxpayer is required to maintain records entirely sufficient to accurately determine taxpayer's sales tax liability. "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks." IC 6-8.1-5-4(a).

In addition, it is taxpayer's responsibility to explain the basis for its protest and to justify the relief requested. "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(b).

Taxpayer has not met his burden of demonstrating that he is entitled to an adjustment of the assessment. The Department conducted a reasoned, rational, and thorough review of taxpayer's available records. Given taxpayer's eccentric business relationships, the erratic method of recording taxable sales, and the incomplete nature of the extant records, there is no coherent rationale which would entitle the Legal Division to second-guess the audit report and the consequent assessments.

### **FINDING**

Taxpayer's protest is respectfully denied.